

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-7259**

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EDDIE DEAN PANNELL,

Petitioner - Appellant,

versus

GENE M. JOHNSON, Director of the Virginia  
Department of Corrections,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern  
District of Virginia, at Norfolk. Henry Coke Morgan, Jr., Senior  
District Judge. (CA-04-310)

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Submitted: December 9, 2004

Decided: December 15, 2004

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Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Eddie Dean Pannell, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Eddie Dean Pannell seeks to appeal the district court's order dismissing his petition filed under 28 U.S.C. § 2254 (2000) as successive. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on June 23, 2004. The notice of appeal was filed on July 26, 2004.<sup>1</sup> Because Pannell failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal.<sup>2</sup> We dispense with oral argument because the facts and

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<sup>1</sup>For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

<sup>2</sup>Although a magistrate judge found Pannell's notice of appeal was timely after according Pannell three extra days under Fed. R. Civ. P. 6(e), Rule 6(e) does not apply to time periods that begin with the filing in court of a judgment or order. See Albright v. Virtue, 273 F.3d 564, 571 (3d Cir. 2001).

legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED